IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

CRL.A.No. 781 of 2004()

SC.525/2002 of ADDL.SESSIONS COURT (ADHOC - I), ALAPPUZHA
CP.49/2002 of JUDL.MAGISTRATE OF FIRST CLASS, HARIPAD
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APPELLANT:

HARI KRISHNAN, S/O. MADHAVAN,
C.NO.7694, CENTRAL PRISON,
THIRUVANANTHAPURAM-695 012.

BY ADV. SRI.SAJEEV.T.P.

RESPONDENT:

STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI.NOBLE MATHEW

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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J.B.KOSHY & K.HEMA, JJ.

CRL.A.NO.781 OF 2004 ()

Dated this the 18th day of September, 2007

J U D G M E N T

KOSHY,J.

Accused three in number faced trial for offence punishable under Sections 498-A, 302, 201 and 404 read with Section 34 of the Indian Penal Code. Appellant A1 was found guilty by the Sessions Court under Sections 302, 201 and 404 of IPC and against the conviction and sentence, this appeal is filed.

2. A1 was accused of killing his wife and child by strangulation. There is no direct evidence to the incident. Prosecution relied on the circumstantial evidence and the trial court found that the prosecution was able to prove all the links in the circumstances pointing out the guilt of the accused. It is settled law that for convicting a person under circumstantial evidence all the links in the chain circumstances shall be

proved beyond doubt and only hypothesis possible is the guilt of the accused and guilt of nobody else. The circumstances relied on by the prosecution are mainly (1) motive (2) last seen theory with the husband and the deceased wife and child (3) non-explanation of the husband about the whereabouts of the wife and child (4) when the accused was arrested from his pocket, MO16 currency notes, MO18 identity card were found out and MO17 pawn receipts shows that on the alleged day of disappearance of the wife and child he has pledged gold ornaments of the wife and child with PW19, a registered pawn-broker. PW19 confirmed regarding the pledging of the gold ornaments by the accused and (5) place where the dead body was buried was shown by the accused himself as can be seen from Exts.P1 and P1(a) recovery mahazar and confession statement. The bangles, thali and alus owned by the deceased were recovered from the house of A2 and A3 (father and mother of A1). PW7 mahazar witness proved the same and PW27 also proved the recovery mahazar. The dress of the deceased were also identified. The dead body was on a decomposed stage and by a superimposition it was found that the dead body was that of the deceased. The identity of the

dead body was not seriously disputed by the appellant.

3. Now we will consider the evidence which proves the above circumstances. MO19 lungi recovered from the house of the accused contained human saliva suggesting death might have occurred due to strangulation as by strangulation, saliva oozed out was wiped. There is no evidence that the death was caused due to poison and there is no allegation of commission of suicide also.

4. The motive sought to be proved by examining PWs.1, 2 as well as 5. PW1 is the brother of the deceased and PW2 is the brother's wife. There is no substantial difference between their version. It is their case that PWs.1 and 2 were living in a house three kilometers away from the house of the accused. His sister Saraswathy, deceased married A1 on 2.5.1999. A2 and A3 are his mother and father. It is their case that at the time of marriage of Usha, sister of A1, gold ornaments of the deceased were requested. But that was not given and therefore she was being tortured by A2 and A3 continuously. Finally marriage of Usha was conducted by getting gold

ornaments of another sister Prema. The house in which accused were staying were given in the name of Prema and deceased was asked to live in the lean-to to the roof of the house. After the marriage of Usha, deceased came to the house of PW1 for delivery. After the child was born, accused, deceased wife and deceased child were residing in the lean-to. Thereafter in view of the continuous torture, she along with the child used to live in the house of PW1 along with PWs.1 and 2. But because of their advise she used to go to the place where A1 was staying and used to cook for him. It is also stated that very close to the lean-to there is a pond and it is very difficult to live with a small child as child may fall in the pond and there was a fencing and that fencing was also destroyed by A2. So, she used to come back to the house of PWs.1 and 2 after cooking food for her husband, but on 6.9.2001, deceased went to live with the accused and then she requested PWs.1 and 2 to look after the child and she entrusted them the child. Since the child cried, PWs.1 and his brother entrusted the child with the deceased and on next day also deceased went to the house of PW1 and after noon, she went back to the lean-to where accused was staying requesting PWs.1 and 2 to give the child

back if the child is crying. The child cried in the night and PWs.1 and 2 went to the place and entrusted the child with his mother Saraswathy at about 11 p.m. At that time both of them stated that only accused and deceased alone were there. A2 and A3 apparently has gone to Manarkkad Church in connection with the festival going there. Next day they did not return. It is also stated that A1 and deceased told them that they were going in the early morning to a temple. At about 6.30 a.m. on the next day, A1 reached the house of PWs.1 and 2 and requested for the bangles of the child and that was entrusted to him and there after he went. According to the version of PWs.1 and 2, they have not seen A1 or the deceased sister and deceased's child thereafter. PW2 also stated that when the matter was enquired with A2, she stated that she must have gone somewhere else and on 13.9.2001, PW1 and others found accused getting down from a bus and they caught hold of him and entrusted him to the police station. From there he heard the news of the death of his sister and the child. PW5 is an independent witness who is residing very close to the lean-to where A1 and deceased were residing with the child. She also stated the quarrel between husband and wife. She

also stated that on 7th at about 5.30 p.m. she saw A1 and the wife in the house. Thereafter according to her, she saw A1 alone in the morning by 11'0 clock and it is also stated that A2 and A3 went to Manarkkad and they returned only on 8th. We are of the opinion that evidence of PWs.1, 2 and 5 clearly proves that on 7th night husband, wife and child were residing at least from 7 p.m onwards and their relationship were not cordial and these evidence proved these circumstances very clearly even though they were cross examined in detail. Accused was not able to contradict the version regarding the motive as well as the last seen logical theory.

5. PW15 mahazar witness, who attested the arrest memo as well as the seizure memo deposed that on 18th when PW26, the Sub-Inspector of Police arrested the accused and examined him and from the pocket of A1, MO16, currency notes worth Rs.4,580/-, MO17 pawn-receipt issued from Kumminiyil Financiers and MO18 identity card of himself. PW19, who was conducting a financial institution, Kunniliyil Financiers stated that MO17 was issued by him when A1 pledged MOs.2, 3 and 8 gold ornaments on 8.9.2001 and an amount of Rs.5,250/- was

received by him and he has got registers to show that those gold ornaments were pledged by the accused. Ext.P1 is the recovery mahazar of the dead body. It is the case of the prosecution that on 17th, the accused was produced by PW1 and others and thereafter on the basis of Ext.P1(a) confession statement made by him, the place where the body was buried was found out and the body was exhumed. It is true that the body was found from the compound of PW11, a close neighbour. By the time A1 reached the place with Police and the skull can be seen from outside. With regard to Ext.P1(a), confession statement there is no much cross examination and the evidence of PWs.7 and 27 proves that place where dead body was seen was shown by the accused. On the basis of Ext.P4(a) confession extract made by A1 that police already went to the house of A2 as it was disclosed that gold bangles, thali and alus were entrusted to A3 in the presence of A2 and evidence of PW27 would show that it was recovered from a trunk kept inside the house of A2. MO19 lungi contained human saliva which supports the theory of the prosecution that on strangulation saliva was oozed out and it was wiped out by using the above lungi. It was recovered from the house of A1

itself. PW23 proved the Chemical examination report. As already stated identification of the deceased is not seriously disputed because of the superimposition. The dress was also identified as of the deceased by PWs.1 and 2. It is pointed out by the counsel for the accused that even though the sister and child were missing, no formal complaint was given by PWs.1 and 2 and only A3 father of A1 gave Ext.P30. It is pertinent to note that the sister of PW1 went with her husband and according to the confession statement furnished by A1 himself that they are going to a temple and naturally brother and sister might have thought that they might have been travelling together even though it has come out in evidence that they were searching. It is also pertinent to note that in the ordinary course, it is for the husband to explain the whereabouts of his wife and child as they were living together in the previous night. Evidence would suggest that there were enquiries with regard to the deceased by the neighbours including PW1, relatives and finally A3 made a formal complaint. But it also appears that no serious action was taken by the police till PW1 was able to catch hold of A1 and produced him before the police station. On going through the evidence as a whole, we

are of the opinion that the entire chain of circumstances were proved without any missing link and the only possible hypothesis from circumstances proved is that accused is guilty and accused alone is guilty. It is true that an innocent child of $1^1/_4$ year old was also killed and yet only the minimum sentence was imposed under Section 302 of IPC and with regard to concealment of the body etc. there is ample evidence. Therefore we see no ground to interfere in the conviction and sentence passed by the court below and hence this appeal is dismissed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

CRL.A.NO.781 OF 2004 (A)

J U D G M E N T

18th September, 2007